

Federal Emergency Management Agency

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(e) Encouraging hazard mitigation measures, such as development of land-use and construction regulations, floodplain management, protection of wetlands, and environmental planning, to reduce losses from disasters.

§ 206.4 State emergency plans.

The State shall set forth in its emergency plan all responsibilities and actions specified in the Stafford Act and these regulations that are required of the State and its political subdivisions to prepare for and respond to major disasters and emergencies and to facilitate the delivery of Federal disaster assistance. Although not mandatory, prior to the adoption of the final plan, the State is encouraged to circulate the plan to local governments for review and comment.

[55 FR 2288, Jan. 23, 1990, 55 FR 5458, Feb. 15, 1990]

§ 206.5 Assistance by other Federal agencies.

(a) In any declared major disaster, the Associate Director or the Regional Director may direct any Federal agency to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) to support State and local assistance efforts.

(b) In any declared emergency, the Associate Director or the Regional Director may direct any Federal agency to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical, and advisory services) to support emergency efforts by State and local governments to save lives; protect property, public health and safety; and lessen or avert the threat of a catastrophe.

(c) In any declared major disaster or emergency, the Associate Director or the Regional Director may direct any Federal agency to provide emergency assistance necessary to save lives and to protect property, public health, and safety by:

(1) Utilizing, lending, or donating to State and local governments Federal equipment, supplies, facilities, personnel, and other resources, other than

the extension of credit, for use or distribution by such governments in accordance with the purposes of this Act;

(2) Distributing medicine, food, and other consumable supplies; or

(3) Performing work or services to provide emergency assistance authorized in the Stafford Act.

(d) Disaster assistance by other Federal agencies is subject to the coordination of the FCO. Federal agencies shall provide any reports or information about disaster assistance rendered under the provisions of these regulations or authorities independent of the Stafford Act, that the FCO or Regional Director considers necessary and requests from the agencies.

(e) Assistance furnished by any Federal agency under paragraphs (a), (b), or (c) of this section is subject to the criteria provided by the Associate Director under these regulations.

(f) Assistance under paragraphs (a), (b), or (c) of this section, when directed by the Associate Director or Regional Director, does not apply to nor shall it affect the authority of any Federal agency to provide disaster assistance independent of the Stafford Act.

(g) In carrying out the purposes of the Stafford Act, any Federal agency may accept and utilize, with the consent of the State or local government, the services, personnel, materials, and facilities of any State or local government, agency, office, or employee. Such utilization shall not make such services, materials, or facilities Federal in nature nor make the State or local government or agency an arm or agent of the Federal Government.

(h) Any Federal agency charged with the administration of a Federal assistance program may, if so requested by the applicant State or local authorities, modify or waive, for a major disaster, such administrative conditions for assistance as would otherwise prevent the giving of assistance under such programs if the inability to meet such conditions is a result of the major disaster.

§ 206.6 Donation or loan of Federal equipment and supplies.

(a) In any major disaster or emergency, the Associate Director or the Regional Director may direct Federal

agencies to donate or loan their equipment and supplies to State and local governments for use and distribution by them for the purposes of the Stafford Act.

(b) A donation or loan may include equipment and supplies determined under applicable laws and regulations to be surplus to the needs and responsibilities of the Federal Government. The State shall certify that the surplus property is usable and necessary for current disaster purposes in order to receive a donation or loan. Such a donation or loan is made in accordance with procedures prescribed by the General Services Administration.

§ 206.7 Implementation of assistance from other Federal agencies.

All directives, known as mission assignments, to other Federal agencies shall be in writing, or shall be confirmed in writing if made orally, and shall identify the specific task to be performed and the requirements or criteria to be followed. If the Federal agency is to be reimbursed, the letter will also contain a dollar amount which is not to be exceeded in accomplishing the task without prior approval of the issuing official.

§ 206.8 Reimbursement of other Federal agencies.

(a) Assistance furnished under § 206.5 (a) or (b) of this subpart may be provided with or without compensation as considered appropriate by the Associate Director or Regional Director.

(b) The Associate Director or the Regional Director may not approve reimbursement of costs incurred while performing work pursuant to disaster assistance authorities independent of the Stafford Act.

(c) *Expenditures eligible for reimbursement.* The Associate Director or the Regional Director may approve reimbursement of the following costs which are incurred in providing requested assistance.

(1) Overtime, travel, and per diem of permanent Federal agency personnel.

(2) Wages, travel, and per diem of temporary Federal agency personnel assigned solely to performance of services directed by the Associate Director or the Regional Director in the major

disaster or emergency area designated by the Regional Director.

(3) Travel and per diem of Federal military personnel assigned solely to the performance of services directed by the Associate Director or the Regional Director in the major disaster or emergency area designated by the Regional Director.

(4) Cost of work, services, and materials procured under contract for the purposes of providing assistance directed by the Associate Director or the Regional Director.

(5) Cost of materials, equipment, and supplies (including transportation, repair, and maintenance) from regular stocks used in providing directed assistance.

(6) All costs incurred which are paid from trust, revolving, or other funds, and whose reimbursement is required by law.

(7) Other costs submitted by an agency with written justification or otherwise agreed to in writing by the Associate Director or the Regional Director and the agency.

(d) *Procedures for reimbursement.* Federal agencies performing work under a mission assignment will submit requests for reimbursement, as follows:

(1) Federal agencies may submit requests for reimbursement of amounts greater than \$1,000 at any time. Requests for lesser amounts may be submitted only quarterly. An agency shall submit a final accounting of expenditures after completion of the agency's work under each directive for assistance. The time limit and method for submission of reimbursement requests will be stipulated in the mission assignment letter.

(2) An agency shall document its request for reimbursement with specific details on personnel services, travel, and all other expenses by object class as specified in OMB Circular A-12 and by any other subobject class used in the agency's accounting system. Where contracts constitute a significant portion of the billings, the agency shall provide a listing of individual contracts and their associated costs.

(3) Reimbursement requests shall cite the specific mission assignment under which the work was performed, and the

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major disaster or emergency identification number. Requests for reimbursement of costs incurred under more than one mission assignment may not be combined for billing purposes.

(4) Unless otherwise agreed, an agency shall direct all requests for reimbursement to the Regional Director of the region in which the costs were incurred.

(5) A Federal agency requesting reimbursement shall retain all financial records, supporting documents, statistical records, and other records pertinent to the provision of services or use of resources by that agency. These materials shall be accessible to duly authorized representatives of FEMA and the U.S. Comptroller General, for the purpose of making audits, excerpts, and transcripts, for a period of 3 years starting from the date of submission of the final billing.

§ 206.9 Nonliability.

The Federal Government shall not be liable for any claim based upon the exercise or performance of, or the failure to exercise or perform a discretionary function or duty on the part of a Federal agency or an employee of the Federal Government in carrying out the provisions of the Stafford Act.

§ 206.10 Use of local firms and individuals.

In the expenditure of Federal funds for debris removal, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities which may be carried out by contract or agreement with private organizations, firms, or individuals, preference shall be given, to the extent feasible and practicable, to those organizations, firms, and individuals residing or doing business primarily in the area affected by such major disaster or emergency. This shall not be considered to restrict the use of Department of Defense resources in the provision of major disaster assistance under the Stafford Act.

§ 206.11 Nondiscrimination in disaster assistance.

(a) Federal financial assistance to the States or their political subdivisions is conditioned on full compliance

with 44 CFR part 7, Nondiscrimination in Federally-Assisted Programs.

(b) All personnel carrying out Federal major disaster or emergency assistance functions, including the distribution of supplies, the processing of the applications, and other relief and assistance activities, shall perform their work in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, or economic status.

(c) As a condition of participation in the distribution of assistance or supplies under the Stafford Act, or of receiving assistance under the Stafford Act, government bodies and other organizations shall provide a written assurance of their intent to comply with regulations relating to nondiscrimination.

(d) The agency shall make available to employees, applicants, participants, beneficiaries, and other interested parties such information regarding the provisions of this regulation and its applicability to the programs or activities conducted by the agency, and make such information available to them in such manner as the head of the agency finds necessary to apprise such persons of the protections against discrimination assured them by the Act and this regulation.

§ 206.12 Use and coordination of relief organizations.

(a) In providing relief and assistance under the Stafford Act, the FCO or Regional Director may utilize, with their consent, the personnel and facilities of the American National Red Cross, the Salvation Army, the Mennonite Disaster Service, and other voluntary organizations in the distribution of medicine, food, supplies, or other items, and in the restoration, rehabilitation, or reconstruction of community services and essential facilities, whenever the FCO or Regional Director finds that such utilization is necessary.

(b) The Associate Director is authorized to enter into agreements with the American Red Cross, The Salvation Army, the Mennonite Disaster Service, and other voluntary organizations engaged in providing relief during and after a major disaster or emergency. Any agreement shall include provisions

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Kansas, Mississippi, Iowa, Oregon, Oklahoma, Connecticut, Colorado, South Carolina, Arizona, Kentucky, Alabama, Louisiana, Minnesota, Maryland, Washington, Tennessee, Wisconsin, Missouri, Indiana, Massachusetts, Virginia, Georgia, North Carolina, New Jersey, Michigan, Puerto Rico.

Large Size States (over 10 million population, listed in order of 1990 population): Ohio, Illinois, Pennsylvania, Florida, Texas, New York, California.

[64 FR 47698, Sept. 1, 1999]

§§ 206.49–206.60 [Reserved]

Subpart C—Emergency Assistance

SOURCE: 55 FR 2296, Jan. 23, 1990, unless otherwise noted.

§ 206.61 Purpose.

The purpose of this subpart is to identify the forms of assistance which may be made available under an emergency declaration.

§ 206.62 Available assistance.

In any emergency declaration, the Associate Director or Regional Director may provide assistance, as follows:

(a) Direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical and advisory services) in support of State and local emergency assistance efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe;

(b) Coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State and local governments;

(c) Provide technical and advisory assistance to affected State and local governments for:

(1) The performance of essential community services;

(2) Issuance of warnings of risks or hazards;

(3) Public health and safety information, including dissemination of such information;

(4) Provision of health and safety measures; and

(5) Management, control, and reduction of immediate threats to public health and safety;

(d) Provide emergency assistance under the Stafford Act through Federal agencies;

(e) Remove debris in accordance with the terms and conditions of section 407 of the Stafford Act;

(f) Provide assistance in accordance with section 408 of the Stafford Act; and

(g) Assist State and local governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance.

[55 FR 2296, Jan. 23, 1990, as amended at 67 FR 61460, Sept. 30, 2002]

§ 206.63 Provision of assistance.

Assistance authorized by an emergency declaration is limited to immediate and short-term assistance, essential to save lives, to protect property and public health and safety, or to lessen or avert the threat of a catastrophe.

§ 206.64 Coordination of assistance.

After an emergency declaration by the President, all Federal agencies, voluntary organizations, and State and local governments providing assistance shall operate under the coordination of the Federal Coordinating Officer.

§ 206.65 Cost sharing.

The Federal share for assistance provided under this title shall not be less than 75 percent of the eligible costs.

§ 206.66 Limitation on expenditures.

Total assistance provided in any given emergency declaration may not exceed \$5,000,000, except when it is determined by the Associate Director that:

(a) Continued emergency assistance is immediately required;

(b) There is a continuing and immediate risk to lives, property, public health and safety; and

(c) Necessary assistance will not otherwise be provided on a timely basis.

§ 206.67 Requirement when limitation is exceeded.

Whenever the limitation described in § 206.66 is exceeded, the Director must report to the Congress on the nature

and extent of continuing emergency assistance requirements and shall propose additional legislation if necessary.

§§ 206.68–206.100 [Reserved]

Subpart D—Federal Assistance to Individuals and Households

§ 206.101 Temporary housing assistance for emergencies and major disasters declared on or before October 14, 2002.

(a) *Purpose.* This section prescribes the policy to be followed by the Federal Government or any other organization when implementing section 408 of the Stafford Act for Presidentially-declared emergencies and major disasters declared on or before October 14, 2002 (Note that the reference to section 408 of the Stafford Act refers to prior legislation amended by the Disaster Mitigation Act 2000).

(b) *Program intent.* Assistance under this program is made available to applicants who require temporary housing as a result of a major disaster or emergency that is declared by the President. Eligibility for assistance is based on need created by disaster-related unlivability of a primary residence or other disaster-related displacement, combined with a lack of adequate insurance coverage. Eligible applicants may be paid for authorized accommodations and/or repairs. In the interest of assisting the greatest number of people in the shortest possible time, applicants who are able to do so will be encouraged to make their own arrangements for temporary housing. Although numerous instances of minor damage may cause some inconvenience to the applicant, the determining eligibility factor must be the livability of the primary residence. FEMA has also determined that it is reasonable to expect applicants or their landlords to make some repairs of a minor nature. Temporary housing will normally consist of a check to cover housing-related costs wherever possible.

(c) *Definitions.*

(1) *Adequate alternate housing* means housing that:

(i) Accommodates the needs of the occupants.

(ii) Is within reasonable commuting distance of work, school, or agricultural activities which provide over 25% of the household income.

(iii) Is within the financial ability of the occupant in the realization of a permanent housing plan.

(2) *Effective date of assistance* means the date the eligible applicant received temporary housing assistance but, where applicable, only after appropriate insurance benefits are exhausted.

(3) *Essential living area* means that area of the residence essential to normal living, i.e., kitchen, one bathroom, dining area, living room, entrances and exits, and essential sleeping areas. It does not include family rooms, guest rooms, garages, or other nonessential areas, unless hazards exist in these areas which impact the safety of the essential living area.

(4) *Fair market rent* means a reasonable amount to pay in the local area for the size and type of accommodations which meets the applicant's needs.

(5) *Financial ability* is the determination of the occupant's ability to pay housing costs. The determination is based upon the amount paid for housing before the disaster, provided the household income has not changed subsequent to or as a result of the disaster or 25 percent of gross post disaster income if the household income changed as a result of the disaster. When computing financial ability, extreme or unusual financial circumstances may be considered by the Regional Director.

(6) *Household* means all residents of the predisaster residence who request temporary housing assistance, plus any additions during the temporary housing period, such as infants, spouses, or part-time residents who were not present at the time of the disaster but who are expected to return during the temporary housing period.

(7) *Housing costs* means shelter rent and mortgage payments including principal, interest, real estate taxes, real property insurance, and utility costs, where appropriate.

(8) *Occupant* means an eligible applicant residing in temporary housing provided under this section.

§ 206.208 Direct Federal assistance.

(a) *General.* When the State and local government lack the capability to perform or to contract for eligible emergency work and/or debris removal, under sections 402(4), 403 or 407 of the Act, the Grantee may request that the work be accomplished by a Federal agency. Such assistance is subject to the cost sharing provisions outlined in § 206.203(b) of this subpart. Direct Federal assistance is also subject to the eligibility criteria contained in Subpart H of these regulations. FEMA will reimburse other Federal agencies in accordance with Subpart A of these regulations.

(b) *Requests for assistance.* All requests for direct Federal assistance shall be submitted by the Grantee to the RD and shall include:

(1) A written agreement that the State will:

(i) Provide without cost to the United States all lands, easements and rights-of-ways necessary to accomplish the approved work;

(ii) Hold and save the United States free from damages due to the requested work, and shall indemnify the Federal Government against any claims arising from such work;

(iii) Provide reimbursement to FEMA for the nonFederal share of the cost of such work in accordance with the provisions of the FEMA-State Agreement; and

(iv) Assist the performing Federal agency in all support and local jurisdictional matters.

(2) A statement as to the reasons the State and the local government cannot perform or contract for performance of the requested work.

(3) A written agreement from an eligible applicant that such applicant will be responsible for the items in subparagraph (b)(1) (i) and (ii) of this section, in the event that a State is legally unable to provide the written agreement.

(c) *Implementation.* (1) If the RD approves the request, a mission assignment will be issued to the appropriate Federal agency. The mission assignment letter to the agency will define the scope of eligible work, the estimated cost of the eligible work and the

billing period frequency. The Federal agency must not exceed the approved funding limit without the authorization of the RD.

(2) If all or any part of the requested work falls within the statutory authority of another Federal agency, the RD shall not approve that portion of the work. In such case, the unapproved portion of the request will be referred to the appropriate agency for action.

(d) *Time limitation.* The time limitation for completion of work by a Federal agency under a mission assignment is 60 days after the President's declaration. Based on extenuating circumstances or unusual project requirements, the RD may extend this time limitation.

(e) *Project management.* (1) The performing Federal agency shall ensure that the work is completed in accordance with the RD's approved scope of work, costs and time limitations. The performing Federal agency shall also keep the RD and Grantee advised of work progress and other project developments. It is the responsibility of the performing Federal agency to ensure compliance with applicable Federal, State and local legal requirements. A final inspection report will be completed upon termination of all direct Federal assistance work. Final inspection reports shall be signed by a representative of the performing Federal agency and the State. Once the final eligible cost is determined (including Federal agency overhead), the State will be billed for the nonFederal share of the mission assignment in accordance with the cost sharing provisions of the FEMA-State Agreement.

(2) Pursuant to the agreements provided in the request for assistance the Grantee shall assist the performing Federal agency in all State and local jurisdictional matters. These matters include securing local building permits and rights of entry, control of traffic and pedestrians, and compliance with local building ordinances.

[55 FR 2304, Jan. 23, 1990, as amended at 64 FR 55161, Oct. 12, 1999]

§ 206.209–206.219 [Reserved]

Subpart H—Public Assistance Eligibility

SOURCE: 55 FR 2307, Jan. 23, 1990, unless otherwise noted.

§ 206.220 General.

This subpart provides policies and procedures for determinations of eligibility of applicants for public assistance, eligibility of work, and eligibility of costs for assistance under sections 402, 403, 406, 407, 418, 419, 421(d), 502, and 503 of the Stafford Act. Assistance under this subpart must also conform to requirements of 44 CFR part 201, Mitigation Planning, and 44 CFR part 206, subparts G—Public Assistance Project Administration, I—Public Assistance Insurance Requirements, J—Coastal Barrier Resources Act, and M—Minimum Standards. Regulations under 44 CFR part 9—Floodplain Management and 44 CFR part 10—Environmental Considerations, also apply to this assistance.

[67 FR 8854, Feb. 26, 2002]

§ 206.221 Definitions.

(a) *Educational institution* means:

(1) Any elementary school as defined by section 801(c) of the Elementary and Secondary Education Act of 1965; or

(2) Any secondary school as defined by section 801(h) of the Elementary and Secondary Education Act of 1965; or

(3) Any institution of higher education as defined by section 1201 of the Higher Education Act of 1965.

(b) *Force account* means an applicant's own labor forces and equipment.

(c) *Immediate threat* means the threat of additional damage or destruction from an event which can reasonably be expected to occur within five years.

(d) *Improved property* means a structure, facility or item of equipment which was built, constructed or manufactured. Land used for agricultural purposes is not improved property.

(e) *Private nonprofit facility* means any private nonprofit educational, utility, emergency, medical, or custodial care facility, including a facility for the aged or disabled, and other facility

providing essential governmental type services to the general public, and such facilities on Indian reservations. Further definition is as follows:

(1) *Educational facilities* means classrooms plus related supplies, equipment, machinery, and utilities of an educational institution necessary or appropriate for instructional, administrative, and support purposes, but does not include buildings, structures and related items used primarily for religious purposes or instruction.

(2) *Utility* means buildings, structures, or systems of energy, communication, water supply, sewage collection and treatment, or other similar public service facilities.

(3) *Irrigation facility* means those facilities that provide water for essential services of a governmental nature to the general public. Irrigation facilities include water for fire suppression, generating and supplying electricity, and drinking water supply; they do not include water for agricultural purposes.

(4) *Emergency facility* means those buildings, structures, equipment, or systems used to provide emergency services, such as fire protection, ambulance, or rescue, to the general public, including the administrative and support facilities essential to the operation of such emergency facilities even if not contiguous.

(5) *Medical facility* means any hospital, outpatient facility, rehabilitation facility, or facility for long term care as such terms are defined in section 645 of the Public Health Service Act (42 U.S.C. 2910) and any similar facility offering diagnosis or treatment of mental or physical injury or disease, including the administrative and support facilities essential to the operation of such medical facilities even if not contiguous.

(6) *Custodial care facility* means those buildings, structures, or systems including those for essential administration and support, which are used to provide institutional care for persons who require close supervision and some physical constraints on their daily activities for their self-protection, but do not require day-to-day medical care.

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(7) *Other essential governmental service facility* means museums, zoos, community centers, libraries, homeless shelters, senior citizen centers, rehabilitation facilities, shelter workshops and facilities which provide health and safety services of a governmental nature. All such facilities must be open to the general public.

(f) *Private nonprofit organization* means any nongovernmental agency or entity that currently has:

(1) An effective ruling letter from the U.S. Internal Revenue Service, granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1954, or

(2) Satisfactory evidence from the State that the nonrevenue producing organization or entity is a nonprofit one organized or doing business under State law.

(g) *Public entity* means an organization formed for a public purpose whose direction and funding are provided by one or more political subdivisions of the State.

(h) *Public facility* means the following facilities owned by a State or local government: any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; any non-Federal aid, street, road, or highway; and any other public building, structure, or system, including those used for educational, recreational, or cultural purposes; or any park.

(i) *Standards* means codes, specifications or standards required for the construction of facilities.

[55 FR 2307, Jan. 23, 1990, as amended at 58 FR 47994, Sept. 14, 1993; 66 FR 22445, May 4, 2001]

§ 206.222 Applicant eligibility.

The following entities are eligible to apply for assistance under the State public assistance grant:

(a) State and local governments.

(b) Private non-profit organizations or institutions which own or operate a private nonprofit facility as defined in § 205.221(e).

(c) Indian tribes or authorized tribal organizations and Alaska Native villages or organizations, but not Alaska

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Native Corporations, the ownership of which is vested in private individuals.

§ 206.223 General work eligibility.

(a) *General*. To be eligible for financial assistance, an item of work must:

(1) Be required as the result of the major disaster event,

(2) Be located within a designated disaster area, and

(3) Be the legal responsibility of an eligible applicant.

(b) *Private nonprofit facilities*. To be eligible, all private nonprofit facilities must be owned and operated by an organization meeting the definition of a private nonprofit organization [see § 206.221(f)].

(c) *Public entities*. Facilities belonging to a public entity may be eligible for assistance when the application is submitted through the State or a political subdivision of the State.

(d) *Facilities serving a rural community or unincorporated town or village*. To be eligible for assistance, a facility not owned by an eligible applicant, as defined in § 206.222, must be owned by a private nonprofit organization; and provide an essential governmental service to the general public. Applications for these facilities must be submitted through a State or political subdivision of the State.

(e) *Negligence*. No assistance will be provided to an applicant for damages caused by its own negligence. If negligence by another party results in damages, assistance may be provided, but will be conditioned on agreement by the applicant to cooperate with FEMA in all efforts necessary to recover the cost of such assistance from the negligent party.

§ 206.224 Debris removal.

(a) *Public interest*. Upon determination that debris removal is in the public interest, the Regional Director may provide assistance for the removal of debris and wreckage from publicly and privately owned lands and waters. Such removal is in the public interest when it is necessary to:

(1) Eliminate immediate threats to life, public health, and safety; or

(2) Eliminate immediate threats of significant damage to improved public or private property; or